

THE X-16-27³

Office of Constables.

Written by Sir FRANCIS^{LE. 19. Q³}
BACON Knight, his Ma-
jesties Attorney Generall in-
the yeare of our Lord 1610.

Being an Answer to the Questions
proposed by Sir ALEXANDER HAY,
touching the Office of Constables.

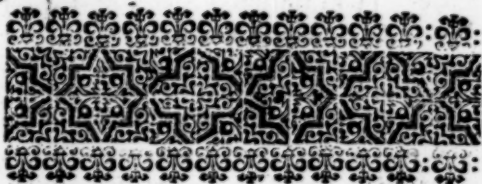
Declaring what power they have, and
how they ought to be cherished
in their Office.



Printed for Francis Coules. 1641.



1731.78



The Office of Constables.

The first, of the Originall of the authoritie of Constables, it may bee said, *Caput inter nubila condit*; for the authoritie was groundd upon the antient Lawes and Customes of this Kingdome practised long before the Conquest, and intended and instituted for the conservation of the peace, and repressing of all manner of disturbance, and hurt of the people, and that as well by way of prevention, as punishment, but yet so as they had no judicall power to heare and determine any cause, but onely a Ministeriall power

A 3



power, as in the answer to the seventh Article more at large is set downe.

As for the Office of the high Constable, the originall of that is yet more obscure: for though the High Constables authoritie and iurisdiction hath the more ample circuit, hee beeing over the hundred, and the pettie Constable over the Vill, yet I doe not find the pettie Constable is subordinate to the high Constable to bee ordered or commanded by him: and therefore I doubt the high Constable was not *ab Origine*, but that when the businesse of the countrie increased, the authoritie of the Iustices of peace was enlarged by divers Statutes: then for conveniences sake the Office of the high Constable grew in use, for the receiuing of the commands and precepts from the Iustices of Peace, and the distributing of them to the pettie Constables, and in token of this, the election of the high Constables in most parts of the Kingdome is by the appoyntment of the Iustices of Peace, whereas the
election

election of the pettie Constable is by the people. But there are two things unto which the office of Constables hath speciall reference, and which of necessity, or at least a kind of congruities must precede the jurisdiction of that office: I meane either the things themselves, or somewhat that hath similitude, or analogy towards them.

1. The one is the division of the territorie or grosse of the shires into Hundreds, Villages, and Townes, for the high Constable is Officer over the Hundred, and the pettie Constable over the Towne or Vill.

2. The other is the Court-Leet, unto which the Constable is a proper attendant and minister: for there the Constables are chosen by the iurie, there they are sworn, and there that part of their office which concerneth information, is principally to be performed; for the Iurie is to present offences, and the offenders are chiefly to take light from
the

(4)

the Constables of matters of disturbance, and nuisance of the peace, which they in respect of that office are presumed to have best, and most particular knowledge of.

Now the institution of the Leet is to three ends.

1. The first, to take the ancient oath of allegiance, of all males above the age of twelve yeares.

2. The second, to enquire of all offences against the Crowne and peace, both to inquire of onely, and certifye to the Justices of Gaole-deliberie, but those that are against the peace simply, they are to enquire and punish.

3. The third, is to enquire of, punish, and remove all publike nuisances, concerning infection of aire, corruption of victualls, ease of chaffer, and contrace of all other things that may hurt or grieve the people in generall in their health,

health, quiet, and welfare.

And to these three ends as matters of policie subordinate, the Court Leet hath power to call upon the pledges that are to bee taken of the good behaviour of the Resiants that are not Tenants, and to inquire of all defaults of Officers, as Constables, Ale-tasters, and the like: and likewise for the choise of Constables, as was said.

1. The jurisdiction of those Leets is either remaining in the King, and in that case exercised by the Sherife in his Tourne, which is the grand Leet granted over to subjects, but yet is still the Kings Court.

2. To the second, the election as was said of the pettie Constable is at the Court Leet by the Inquests that makes the presentments: The election of the head Constables is by the Justices of peace at their Quarter Sessions.

3. To the third, the office of the Constable

Constable is annuall, except they bee removed.

4. To the fourth, they be men (as its now used) of interiour, yea of base condition, which is a meere abuse, or degenerating from the first institution: For the pettie Constables in Townes ought to be of the better sort of Resiants in the said Towne, save that they ought not to bee aged or sicklie men; but men of able bodies in respect of the keeping Watch, and toyle of their places.

Neither ought they to bee in any mans Liverie. And the High Constable ought to be of the ablest of Freeholders, and of the most substantiall sort of Peoman, next to the degree of Gentlemen: but they ought to be such as are not incumbred with any other, as Major of the Towne, under Sheriffe, Bailiffe, &c.

5. To the fift, they have no allowance, but are bound by dutie to performe

forme their Office *gratis*, which may the rather be endured; because it is but annuall, and likewise because they are not tyed to keep or maintaine any seruants, or under-ministers; for that everie one of the Kings people within their Limits are bound to assise them.

6. To the sixt, upon complaint made of his refusall to any one Justice of Peace, the said Justice may binde him ober to the Sessions, Where (if he cannot excuse himselfe by some allegation that is just) hee may be fined and imprisoned for his contempt.

7. To the seventh, the Authoritie of the Constables as it is substantive, and of it selfe, and ascribed to the Warrants and Commands of the Justices of Peace: So againe, it is originall or additionall, for either it was given them by the Common Lawes, or else annexed by divers Statutes: And as for subordinate power, wherein the Constable is onely to execute the command

mandement of the Iustices of Peace, and likewise the additionall power, which is given by divers statutes, it is hard to comprehend them in any brevitie, for that they doe correspond to the office and authoritie of the Iustices of peace, which is very large and are created by the branches of severall statutes, which are things of divers and dispersed Natures. But for the Originall and Substantive power of a constable may be reduced to three heads,

1. For matter of peace onely.
2. For matter of peace and Crowne.
3. For matter of nuzance and disorder, although they bee not accompanied with violence, or breach of peace.

For pacifying of quarrells begun, the Constables may, upon hot words given, or likelihood of breach of peace to ensue, command them in the
Kings

Kings Name to keep the peace, and to depart and forbear, and so hee may where an affray is made, part the same and keepe the parties asunder, and arrest and commit the breakers of peace, if they will not obey and call power to assist him for the same purpose.

For punishment of breach of peace past the Law, is verie sparing in giving any power or Authoritie to Constables, because he hath no power judiciall: and the use of his Office is rather for preventing, or staying mischief, than for punishing of offences: for, in that part he is rather to execute the Warrants of the Iustices, or when suddaine matter ariseth upon his view, or notorious circumstances, to apprehend the offenders, and carrie them before the Iustices of Peace, and generally to imprison in like cases of necessitie, where the case will not endure the present carrying of the partie before

before the Iustices. And thus much
for matter of the peace.

For matters of the Crowne,
the Office of the Con-
stable consisteth
chiefely of foure
parts, viz.

1. Arrest.
2. A Search:
3. Hue and Crie.
4. A Seizure of goods.

All which, the Constable may per-
forme of his owne authoritie, without
any warrant of the Iustices of peace:
for,

1. First, if any man will lay murther
or felonie to anothers charge, or doe
suspect him of Murther or Felonie,
hee may declare it to the Constable, and
the

the Constable ought upon such declaration or complaint, to carrie him before the Iustice, and if by common voyce or fame any man bee suspected, the Constable of dutie ought to arrest him, and bring him before a Justice, though there bee no other Accusation, or Declaration.

2. Secondly, If any house bee suspected, for the receiving or harbouring of any Felon, the Constable upon complaint or common Fame may search.

3. Thirdly, if any flie upon the Felonie, the Constable ought to raise Hue and Crie.

4. Fourthly, the Constable ought to feize his goods, and keepe them safe without impairing, and Inventorie them in the presence of honest neighbours.

For

For matter of common Ruzaunce of corrupting aire, water, or victuall, or stopping, or straightning, or endangering any passage, or generall deceits in weights, measures, lises, or counterfeiting of Wares and things vendible: The Office of the Constable is to give (as much as in him is) information of them, and of the offenders in Leets, that they may bee presented.

But because Leets are kept but twice in the yeare, and many of those things require a speedy or present remedy, the Constable in things notorious, and of vulgar nature, ought to forbid, and repress them in the meane time.

8. To the eighth, they are for their contempt to bee fined, and imprisoned, or both, by the Justices in their Sessions.

9. To

The Oath of Constables.

9. To the ninth, the oath they take is in this manner, you shall sweare, that you shall well and truly serbe the King, and the Lord of this Law-day: and you shall cause that the peace of our Sovereigne Lord the King shall bee well and duely kept to your power,

And you shall arrest all those that you see committing Riots, Debates, and affrayes in breach of peace.

And you shall well and duely endeavour your selfe to your best knowledge, that the Statutes of Winchester, for Watch, Hue, and Crie, and the Statute made for punishment of sturdy Beggers, Vagabonds, Rogues, and other idle persons, comming within your Office,

fice, that the Offenders bee punished.

And you shall endeavour upon complaint made, to apprehend Barretors and Riotous persons making Affraies, and likewise to apprehend Felons: and if any of them make resistance with force and multitude of mis-doers, you shall make out-crie, and pursue them till they be taken.

And you shall look unto such persons as use unlawfull games.

And you shall have regard unto the maintenance of Artillerie.

And you shall well and duely execute all Processe and Precepts sent unto you from the Justices of Peace of the Countie.

And you shall make good and faithfull presentments of all Bloud-sheds, Out-cries, Affraies, and Rescues made within your Office.

And you shall well and duely, according to your power and knowledge,

ledge, doe that which belongeth to
your Office of a Constable to doe for
this yeare to come.

So helpe you God.

10. To the tenth, their authori-
tie is the same in substance, differ-
ring onely in the extent: The pettie
Constable serving onely for one
Towne, Parish, or Burrough;
the head Constable serving for a
whole hundred: Neither is the
pettie Constable subordinate to the
Head Constable for any Comman-
dement that proceeds from his owne
Authoritie. But it is used that the
Precepts of the Iustices bee delive-
red unto the high Constables, who
being few in number, may better
attend the Iustices: and then the
head-Constable by vertue thereof
makes his Precepts over to the
pettie Constables.

II. To the eleventh, the Constable in case of necessitie may appoynt a Deputie, or in default thereof, the Steward of the Leet may : which Deputie ought to bee sworn before the said Steward.

The Office of Constables consisteth wholly in these
three things, viz.

1. Their Office concerning the conservation of the peace.
2. The serving of the Precepts and Warrants of the Justices.
3. Their attendance for the execution of the Statutes.

The Office of a Constable is of great Power and Authority, especially by night, at which time they have the whole rule and government, and ought to bee obeyed, as well without

without their staffe of Office or Authority as with it, provided they declare and make themselves known by that title, and in the Kings Majesties Name: for it is not the staffe, which makes the Constable, but the Office unto which hee is sworne unto: and therefore may command in his Majesties Name any person or persons to goe along, ayd, and assist him in and upon all occasions: for while his Majestie and his Ministers of qualitie take their rest in the night, the Constables Office is to bee intrusted with that part of the Citie or Precinct unto which hee is called, for feare of uproares and robberies, and such like outrages: and for that reason Constables ought to bee cherished, and respected, if they faithfully discharge that trust committed unto them: and let them that are chosen into this Office bee both faithfull and trusty to discharge that

(18)

that trust which is committed unto
them : and let not future hope , nor
present reward blind their eyes , nor
make deafe their eares , least
some danger may ensue
which may prove
their ruine and
destruction.

*Felix quæm faciunt aliena pericula
cantum.*

F I N I S.



